

**Before the House Judiciary Committee**

**February 2, 2009**

**Testimony of Barbara A. Bessey, CP**

**Chair of Paralegal Section of the State Bar of Montana**

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**House Bill 301**

Submitted to the House of Representatives Judiciary Committee as part of the legislative hearing on HB 301 to include paralegal services in attorney fee awards.

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Good morning, Mr. Chairman and members of the Committee. For the record my name is Barbara A. Bessey. I am a Certified Paralegal. I am speaking to you today as the Chair of the Paralegal Section of the State Bar of Montana. Thank you for the opportunity to testify this morning.

I have been employed in the legal profession for 25 years, and as a paralegal for 16 years. I received a Bachelors of Arts degree in 1993 and became certified by the National Association of Legal Assistants in 1997. I am a member of the National Association of Legal Assistants (NALA) and its affiliate Montana Association of Legal Assistants (MALA). I am dedicated and passionate about my career as a paralegal. It is not just a job. I am a professional, and I volunteer my time to my professional organizations.

I am here to introduce this legislation to you. Mr. Chairman, may I introduce five District Court Orders and a Montana Attorney and Paralegal Fee Chart as supporting evidence for today's hearing. Thank you, Mr. Chairman. Several of my colleagues will

testify with personal knowledge regarding these orders.

I would like to generally testify that the Paralegal Section has been working on this legislation for many years. The paralegal profession is continually evolving. The Paralegal Section was established in 1999, and 140 paralegals were voluntarily registered. Today, the Section has 164 voluntarily registered members. It is our hope that this legislation, which clearly defines the title of paralegal and the qualifications that are associated with the title, clarifies by statute who we are as professionals.

We are aware that we are going to receive some opposition to the definition and the parameters of the qualifications. One of my colleagues will be testifying that a Registered Nurse or a Chemical Engineer, although working for a law firm, are not paralegals, but consultants. Paralegals perform specifically-delegated legal work that requires a knowledge of legal concepts such that, absent the paralegal, the attorney would perform the assigned tasks. Our definition deviates from the ABA definition by deleting "work for which a lawyer is responsible", and replaced it with "in the absence of a paralegal, would be performed by an attorney", which is what paralegal work is. Legal secretaries also do not have a complete knowledge of legal concepts that a paralegal learns through education. We have our own unique career path that requires education, certification, and experience, which gives us the right to be titled a "paralegal".

One of my colleagues is going to speak to you about certification, which is

referenced in HB 301, New Section 2(2)(c). An individual such as a Registered Nurse, for example, certainly could work as a nurse paralegal if she completes a paralegal course of 18 credits or takes either the CLA/CP examination offered by NALA or the PACE examination offered by the National Federation of Paralegals Association (NFPA).

In HB 301, New Section 2(2)(d) is our "grandfather" provision for paralegals that have no formal education and have been trained in-house for many years, as many as 10 - 20 years, or maybe as few as 4-5 years if they can substantiate that they have performed not less than 4800 hours of substantive legal work under the supervision of an attorney. It is our hope as a professional organization voluntarily registering paralegals that paralegals in this category eventually take the CLA/CP or PACE examinations to add credibility to their work experience and the use of the title of "paralegal". This legislation, with a strong definition and qualification requirements, also safeguards the general public of Montana.

As with any type of business, rising costs define how businesses are operated. In Montana with its rural population, affordable legal costs are paramount to equal justice. Paralegals are educated and trained to assist attorneys in their practice of law. For many firms, tasks that were once handled by an attorney are now completed by paralegals at a lower rate to their clients. However, if the firm is successful in a judgment for their client, fees that the client has paid for a paralegal's work under the present statute, Section 37-6-215, MCA are not reimbursable. It is somewhat of a

"catch 22". If the attorney had spent more of his time on the case doing everything that the paralegal did, the client would have been reimbursed for those fees, but, only after he had already been billed and paid for those fees – more up front money out-of-pocket. If every attorney in Montana had to spend considerably more hours on every case, he would certainly take on less cases. There is a huge need for low cost and pro bono legal services in Montana.

Many law firms over the course of the last few years have included paralegal fees as part of their request for attorney fees as a means of reducing costs to their clients. However, judges in Montana have denied reimbursement of paralegal fees pursuant to Section 37-6-215, MCA, which is the statute we propose be amended to include paralegal fees as a component of attorney fees.

Mr. Chairman and members of the committee, thank you for the opportunity today to speak to you. I urge you to please assist the legal community in providing cost effective legal services to Montanans. I ask for passage of House Bill 301. Thank you.

Prepared by:

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